IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 88 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MOHAMMAD ILYAS S/O AHMEDKHAN KHOKHAR

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioner

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 14/07/97

ORAL JUDGEMENT

When wrong identification of a surety which was disclosed at the time when the presence of accused was being enforced under the bail bond already granted, it came to the notice that, two Advocates practising at Bharuch have identified the surety and this identification, prima facie, does not appear to be

correct. On the basis of the report made by the Police, the matter came up before the ld. Sessions Judge, for cancellation of bail and as a part of it, the ld. Sessions Judge also proceeded to hold inquiry and issued notices to the two practising Advocates, namely, Shri M.A.Khokhar and Shri V.D.Parmar, in Criminal Misc. Appln. No. 39 of 1996, initiated by the State and they filed a combined reply as per Annexure.Y.

The ld.Sessions Judge, by order dated 15.2.1997 decided that Shri Khokhar be prosecuted for the offences punishable under Sections 419, 120-B, 205 read with Section 114 of IPC. It is against this order, the present petition is filed.

The aforesaid finding of ld. Judge clearly means that, Advocate Shri Parmar is let off. If in respect of one and the same case for these identifications are attributed to the aforesaid two Advocates and if one is let off, the question will be what case, if any, is there against the remaining Advocate.

In the very Criminal Misc. Appln. No. 39 of 1996, also, an affidavit-in-reply has been filed, at Exh.45, which is annexed to the petition at Annexure.V, page 69. In para 4 of the reply, it has been set out categorically that, the surety Shri Kantibhai Naranbhai Thakore was introduced to them by a practising Advocate of Ahmedabad, namely, Shri Munir Shaikh who is staying in Shahpur and is practising in Mirzapur Court. It was the said Advocate Shri Shaikh who introduced the surety to the accused and identified him as such and the accused taking the surety, went to Bharuch Court and engaged the aforesaid two Advocates for the aforesaid purpose.

Thus, what Shri Khokhar, the person in this present revision did was to place reliance on a brother Advocate of Ahmedabad and if that is his only fault, obviously, it is hardly any question of his having committed offence punishable under Sections 319, 120-B, 205 and 114 of IPC.

Almost a similar situation was prevailing in a decided by the Supreme Court in the case of HIRALAL JAIN v. DELHI ADMINISTRATION, reported in AIR 1972 S.C. 2598. In paragraphs 9, 10, and 12 of the said judgment, the learned Judges have dealt with the situation and have come to the following conclusion:

"Where an advocate was engaged by some persons for identifying them as claimants in an

application made on their behalf to claim certain Land-acquisition-compensation amount and the advocate believing the statements of the claimants as true filed his vakalatnama agreeing to act on their behalf, and there was no evidence to show prior knowledge on the part of advocate that the claimants were not the real persons entitled to claim the amount and no concert between the former and the latter was brought on record:

Held, it could not be said that there was prima facie evidence entitling the Magistrate to commit the advocate for offences under Ss.120-B read with 419, 420, 511 and Ss.467 read with 471."

The second submission made on behalf of the petitioner by ld. Advocate Mr.Shethna on the important finding about the proceeding required to be made at the end of enquiry under Section 195 of the Code of Criminal Procedure and as to the proceedings, the natural justice is also missing in the order. However, I am not entering into that aspect at all, because of the aforesaid factual background. The aforesaid Supreme Court decision clearly applies to the facts of the present case and covers in full. The revision application is, therefore, allowed. The order passed by the ld. Sessions Judge, on 15.2.1997 in Criminal Misc. Application No. 39 of 1996 is hereby quashed and set aside. Rule is made absolute accordingly.

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